

ATTACHMENT H-1

ATTACHMENT H-1 – PLAINTIFF’S TRIAL BRIEF

Plaintiff believes that Defendants will take the position that all Orders from the MDL litigation shall be “the law of the case” in this case. That is not what was agreed upon in the MDL. To the contrary, the parties acknowledged that the parties reserved the right to challenge rulings upon Remand. *See* Exhibit 1, attached hereto.

For example, only, the MDL Court admitted information about the FDA 510(k) process into evidence at trial. Numerous judges in this Court, other Georgia federal District Court Judges and the 11th Circuit have held such information inadmissible as the 510(k) process does not evaluate a product’s safety and therefore it is not relevant to the issues before the jury. Plaintiff will brief this issue, and others, at the time that Motions in Limine are filed.

Plaintiff is not able to comment on anything contained in Defendants’ Trial Brief as she has not received a copy of same.

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE BARD IVC FILTERS PRODUCTS
LIABILITY LITIGATION:

All Cases

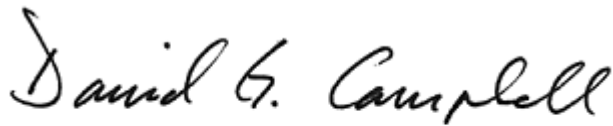
No. MDL15-2641-PHX-DGC

ORDER

Pending before the Court is the parties' joint stipulation of designation of record on remand pursuant to JPML Rule 10.4(a). Doc. 13158.

IT IS ORDERED that the stipulation (Doc. 13158) is **granted**. The Clerk of Court is directed to provide the court for each remanded case a ZIP file containing the documents listed on Exhibit 1 of the parties' stipulation of designation of record on remand (Doc. 13158) as Relevant MDL Orders.

Dated this 29th day of January, 2019.



David G. Campbell
Senior United States District Judge

1 Mark S. O'Connor (011029)
2 GALLAGHER & KENNEDY, P.A.
3 2575 East Camelback Road
4 Phoenix, Arizona 85016-9225
5 Telephone: (602) 530-8000
6 mark.oconnor@gknet.com

7 Ramon Rossi Lopez (admitted *pro hac vice*)
8 (CA Bar No. 86361)
9 LOPEZ McHUGH LLP
10 100 Bayview Circle, Suite 5600
11 Newport Beach, California 92660
12 rlopez@lopezmchugh.com

13 *Attorneys for Plaintiffs*

14 James R. Condo (#005867)
15 Kristine L. Gallardo (#033975)
16 SNELL & WILMER L.L.P.
17 One Arizona Center
18 400 E. Van Buren, Suite 1900
19 Phoenix, AZ 85004-2204
20 Telephone: (602) 382-6000
21 jcondo@swlaw.com
22 kgallardo@swlaw.com

23 Richard B. North, Jr. (admitted *pro hac vice*)
24 Georgia Bar No. 545599
25 Matthew B. Lerner (admitted *pro hac vice*)
26 Georgia Bar No. 446986
27 NELSON MULLINS RILEY & SCARBOROUGH LLP
28 Atlantic Station
201 17th Street, NW, Suite 1700
Atlanta, GA 30363
Telephone: (404) 322-6000
richard.north@nelsonmullins.com
matthew.lerner@nelsonmullins.com

Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

This Document Relates to:

Tillman v. C. R. Bard, Inc., et al.
No. 3:13-cv-0222 (M.D. Fla.)

No. 2:15-MD-02641-DGC

**JOINT STIPULATION OF
DESIGNATION OF RECORD ON
REMAND PURSUANT TO JPML
RULE 10.4(a)**

(Assigned to the Honorable David G.
Campbell)

Nelson Mullins Riley & Scarborough

L.L.P.
201 17th Street NW, Suite 1700
Atlanta, GA 30363
(404) 322-6000

Ocasio v. C. R. Bard, Inc., et al.
No. 8:13-cv-01962 (M.D. Fla.)

Cason v. C. R. Bard, Inc., et al.
No. 1:12-cv-01288 (N.D. Ga.)

Coker v. C. R. Bard, Inc., et al.
No. 1:13-cv-0515 (N.D. Ga.)

Rivera (McClarty) v. C. R. Bard, Inc., et al.
No. 4:14-cv-13627 (E.D. Mich.)

Ebert v. C. R. Bard, Inc., et al.
No. 5:12-cv-01253 (E.D. Pa.)

Keen v. C. R. Bard, Inc., et al.
No. 5:13-cv-05361 (E.D. Pa.)

Smith v. C. R. Bard, Inc., et al.
No. 1:13-cv-00633 (E.D. Tex.)

Fox v. C. R. Bard, Inc., et al.
No. 3:14-cv-00133 (N.D. Tex.)

Henley v. C. R. Bard, Inc., et al.
No. 2:14-cv-00059 (E.D. Wis.)

Pursuant to Rule 10.4(a) of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the Court’s Order of September 7, 2018, and the agreement of all parties, Defendants C. R. Bard, Inc., and Bard Peripheral Vascular, Inc. (collectively, “Bard”), hereby submit the following designations for the record to be remanded in the above-captioned cases:

- As required by JPML Rule 10.4(b), all entries in the individual member case dockets for the above-captioned cases; and

- All documents from the Master MDL case file (No. 15-MD-02641) that are listed in **Exhibit “A”**, attached hereto.

The parties reserve the right to challenge the relevance of any document or filing, in whole or in part, or any ruling designated herein upon remand. By entering this stipulation, the parties are not conceding that any ruling binds the parties on the merits or is the law of the case on remand. Further, while the parties were diligent in reviewing the docket and making these designations, the parties reserve the right to present to the transferor court any documents or filings that were inadvertently excluded from this designation.

RESPECTFULLY SUBMITTED this 30th day of October, 2018.

GALLAGHER & KENNEDY, P.A.

NELSON MULLINS RILEY &
 SCARBOROUGH, LLP

By: /s/ Mark O'Connor (with permission)

By: /s/ Richard B. North, Jr.

Mark S. O'Connor (011029)
 2575 East Camelback Road
 Phoenix, AZ 85016-9225

Richard B. North, Jr. (*pro hac vice*)
 Georgia Bar No. 545599
 Matthew B. Lerner (*pro hac vice*)
 Georgia Bar No. 446986
 Atlantic Station
 201 17th Street, NW / Suite 1700
 Atlanta, GA 30363

Ramon Rossi Lopez
 (admitted *pro hac vice*)
 CA Bar No. 86361
 LOPEZ MCHUGH LLP
 100 Bayview Circle, Suite 5600
 Newport Beach, CA 92660

James R. Condo (005867)
 Kristine L. Gallardo (033975)
 SNELL & WILMER L.L.P.
 One Arizona Center
 400 E. Van Buren
 Phoenix, AZ 85004-2204

*Co-Lead/Liaison Counsel for
 Plaintiffs*

*Attorneys for C. R. Bard, Inc. and Bard
 Peripheral Vascular, Inc.*

Nelson Mullins Riley & Scarborough

LLP
 201 17th Street NW, Suite 1700
 Atlanta, GA 30363
 (404) 322-6000

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
Richard B. North, Jr.

Exhibit A – Relevant MDL Orders

CASE MANAGEMENT ORDERS		
Date Filed	Docket No	Docket Text
10/30/2015	248	Case Management Order No. 1 re Leadership Counsel Appointments
11/16/2016	4016	Amended Case Management Order No. 1 re Leadership Counsel Appointments
03/21/2017	5285	Second Amended Case Management Order No. 1 re Plaintiff Leadership Team
10/30/2015	249	Case Management Order No. 2 re Setting Deadlines, First Phase of Discovery
12/01/2015	314	Case Management Order No. 3 re Non-waiver Order Pursuant to Rule 502(d)
12/17/2015	363	Case Management Order No. 4 re Master Complaint, Responsive Pleadings, Short Form Complaint, Waiver, and Answer
12/17/2015	365	Case Management Order No. 5 re Plaintiff and Defendant Profile Forms
03/03/2016	927	Amended Case Management Order No. 5 re Plaintiff and Defendant Profile Forms
12/18/2015	372	Case Management Order No. 6 re Rules to Establishing Common Benefit Fee
01/05/2016	401	Case Management Order No. 7 re Stipulations Concerning Redactions
02/02/2016	519	Case Management Order No. 8 re Second Phase of Discovery
03/31/2016	1259	Case Management Order No. 9 re Electronically Stored Information and production protocol
04/01/2016	1319	Case Management Order No. 10 re Second Phase Discovery, Bellwether, ESI, FDA, Deposition, and Privilege Log
05/05/2016	1662	Case Management Order No. 11 re Bellwether Selection Process
05/05/2016	1663	Case Management Order No. 12 re Joint Record Collection
06/21/2016	2238	Case Management Order No. 13 re ESI, FDA Warning Letter and Designations
06/21/2016	2239	Case Management Order No. 14 re Deposition Protocols
08/25/2016	3214	Case Management Order No. 15 re Lexecon Waivers, ESI Discovery, Multi-plaintiff Actions, and Deceased Plaintiffs
08/25/2016	3215	Case Management Order No. 16 re Deadlines Related to Barraza
12/02/2016	4141	Amended Case Management Order No. 16 re Deadlines Related to Barraza
09/14/2016	3372	Case Management Order No. 17 re Protective Order and Expedited ESI Production
11/16/2016	4015	Amended Case Management Order No. 17 re Protective Order and Redactions of Material from Expedited ESI Production

10/17/2016	3685	Case Management Order No. 18 re Adjusted Discovery Schedule
12/13/2016	4311	Case Management Order No. 19 re ESI and Bellwether Selection
Date Filed	Docket No	Docket Text
12/22/2016	4335	Case Management Order No. 20 re Discovery Deadlines for Discovery Group 1 and Bellwether Group 1
02/06/2017	4866	Case Management Order No. 21 re Discovery Protocols for Discovery Group 1
02/17/2017	5007	Case Management Order No. 22 re Setting Deadlines
05/05/2017	5770	Case Management Order No. 23 re Expert Deposition Deadlines, Bellwether Case Selection, Preemption Motion for Summary Judgment, and Mature Cases
05/19/2017	5881	Case Management Order No. 23 re Discovery Protocols for Bellwether Group 1
05/19/2017	5883	Amended Case Management Order No. 24 re Discovery Protocols for Bellwether Group 1
06/06/2017	6227	Case Management Order No. 25 re Bellwether Group 1 Amended Discovery Schedule
07/17/2017	6799	Case Management Order No. 26 re Depositions of Dr. Henry and Dr. Altonaga, Communications among Plaintiffs' Experts, and Bellwether Trial Issues
10/10/2017	8113	Case Management Order No. 27 re Privilege Issues, Bellwether Trial Schedule, Plaintiffs' Motion for Partial Summary Judgment, and Recusal Unnecessary
11/21/2017	8871	Case Management Order No. 28 re Booker Bellwether Trial Schedule, and Mature Cases
12/21/2017	9415	Case Management Order No. 29 re Booker Bellwether Trial Schedule, Motion to Certify Appeal, and <i>Cisson</i> Motion Briefing
01/23/2018	9775	Case Management Order No. 30 re Motions Hearings, Motions in Limine, and Punitive Damages in Booker
03/02/2018	10323	Case Management Order No. 31 re Booker Trial
05/07/2018	11011	Case Management Order No. 32 re Jones Trial
06/01/2018	11320	Case Management Order No. 33 re Mulkey as Next Bellwether Selection, and Mulkey Trial Schedule
06/28/2018	11659	Case Management Order No. 34 re Next 3 Bellwether Trials, Kruse Trial Schedule, Use of Dr. Kandarpa at Trial, Sixth Bellwether Tinlin, Disposition of SNF Cases, and Remand of Mature Cases
07/13/2018	11871	Case Management Order No. 35 re September, November and May Bellwether Trials, and Hyde September Bellwether Trial Schedule
08/02/2018	12061	Case Management Order No. 36 re Tinlin Bellwether Pre-trial Schedule

DISCOVERY ORDERS		
Date Filed	Docket No	Docket Text
10/30/2015	249	Case Management Order No. 2 re Setting Deadlines, First Phase of Discovery
02/02/2016	519	Case Management Order No. 8 re Second Phase of Discovery
03/31/2016	1259	Case Management Order No. 9 re Electronically Stored Information and production protocol
04/01/2016	1319	Case Management Order No. 10 re Second Phase Discovery, Bellwether, ESI, FDA, Deposition, and Privilege Log
05/05/2016	1663	Case Management Order No. 12 re Joint Record Collection
06/21/2016	2238	Case Management Order No. 13 re ESI, FDA Warning Letter and Designations
06/21/2016	2239	Case Management Order No. 14 re Deposition Protocols
08/25/2016	3214	Case Management Order No. 15 re Lexecon Waivers, ESI Discovery, Multi-plaintiff Actions, and Deceased Plaintiffs
08/29/2016	3272	Order re Deposition of Jim Beasley
09/06/2016	3312	Order re discovery disputes concerning Plaintiffs' communications with FDA
09/06/2016	3313	Order re Plaintiffs' communications with NBC or other media outlets and admissibility at trial
09/06/2016	3314	Order re Plaintiffs' third party funding arrangements
09/14/2016	3372	Case Management Order No. 17 re Protective Order and Expedited ESI Production
11/16/2016	4015	Amended Case Management Order No. 17 re Protective Order and Redactions of Material from Expedited ESI Production
09/16/2016	3398	Order re ESI generated by foreign entities that sell filters abroad
10/17/2016	3685	Case Management Order No. 18 re Adjusted Discovery Schedule
12/13/2016	4311	Case Management Order No. 19 re ESI and Bellwether Selection
12/22/2016	4335	Case Management Order No. 20 re Discovery Deadlines for Discovery Group 1 and Bellwether Group 1
12/24/2016	4339	Order re proposed depositions of and interrogatories to Plaintiffs' counsel
02/06/2017	4865	Order re discovery dispute on ex parte communications with treating physicians and depositions of treating physicians and sales representatives
02/06/2017	4866	Case Management Order No. 21 re Discovery Protocols for Discovery Group 1
05/05/2017	5770	Case Management Order No. 23 re Expert Deposition Deadlines, Bellwether Case Selection, Preemption Motion for Summary Judgment, and Mature Cases
05/19/2017	5881	Case Management Order No. 23 re Discovery Protocols for Bellwether Group 1

Date Filed	Docket No	Docket Text
05/19/2017	5883	Amended Case Management Order No. 24 re Discovery Protocols for Bellwether Group 1
06/06/2017	6227	Case Management Order No. 25 re Bellwether Group 1 Amended Discovery Schedule
07/17/2017	6799	Case Management Order No. 26 re Depositions of Dr. Henry and Dr. Altonaga, Communications among Plaintiffs' Experts, and Bellwether Trial Issues
DISCOVERY AND PRIVILEGE ORDERS		
12/01/2015	314	Case Management Order No. 3 re Non-waiver Order Pursuant to Rule 502(d)
02/11/2016	699	Order re Motion for Protective Order concerning Dr. John Lehmann's December 15, 2004, report as protected work product
07/25/2016	2813	Order re Plaintiffs' Motion to Compel (Privilege Log Issues)
02/06/2017	4865	Order re discovery dispute on ex parte communications with treating physicians and depositions of treating physicians and sales representatives
07/17/2017	6799	Case Management Order No. 26 re Depositions of Dr. Henry and Dr. Altonaga, Communications among Plaintiffs' Experts, and Bellwether Trial Issues
10/10/2017	8113	Case Management Order No. 27 re Privilege Issues, Bellwether Trial Schedule, Plaintiffs' Motion for Partial Summary Judgment, and Recusal Unnecessary
10/20/2017	8315	Order that Plaintiffs need not produce the withheld expert communications or provide a privilege log on these communications to Defendants.
DAUBERT ORDERS		
12/21/2017	9428	Order re Motion to Disqualify Plaintiffs' Expert Thomas Kinney, M.D.
12/21/2017	9432	Order re Motion to Disqualify Plaintiffs' Experts Drs. Resnick, Vogelzang, and Desai
12/22/2017	9433	Order re Motion to Exclude Plaintiffs' Experts Drs. Parisian and Kessler
12/22/2017	9434	Order re Motion to Exclude Plaintiffs' Experts Drs. Kinney, Roberts, and Kalva
01/22/2018	9770	Order re Motion to Exclude Plaintiffs' Expert Dr. Eisenberg
01/22/2018	9771	Order re Motion to Exclude Plaintiffs' Expert Dr. Muehrcke
01/22/2018	9772	Order re Motion to Exclude Plaintiffs' Expert Dr. Hurst
01/22/2018	9773	Order re Motion to Exclude Plaintiffs' Expert Dr. Betensky
02/06/2018	9991	Order re Motion to Exclude Bard's Expert Dr. Grassi

Date Filed	Docket No	Docket Text
02/08/2018	10051	Order re Motion to Exclude Plaintiffs' Expert Dr. McMeeking
02/08/2018	10052	Order re Motion to Exclude Plaintiffs' Expert Dr. Ritchie
02/12/2018	10072	Order re Motion to Exclude Plaintiffs' Experts Drs. Garcia and Streiff
02/21/2018	10230	Order re Motion to Exclude Bard's Experts Drs. Grassi and Morris
02/21/2018	10231	Order re Motion to Exclude Bard's Expert Dr. Morris
MOTIONS IN LIMINE ORDERS		
01/23/2018	9775	Case Management Order No. 30 re Motions Hearings, Motions in Limine, and Punitive Damages in Booker
01/26/2018	9861	Joint Stipulation re prohibiting raising certain issues in the presence of the jury for Booker Bellwether case
01/29/2018	9881	Order re admissibility of (1) pre-market clearance of Bard IVC filters by FDA and (2) the lack of FDA Enforcement Action against Bard
02/15/2018	10075	Order re Motions in Limine re Photographs of Mike Randall, Dr. Kinney work for Bard, Benevolent Activities, Evidence Not Produced in Complaint Files, Prior Judicial Opinions, Adverse Impact of a Plaintiff's Verdict, Informed Consent Form, Dr. Kang Social Media Posts, Personal Traits of Employees and Witnesses for Booker Bellwether case
02/22/2018	10235	Order re Parties' Joint Stipulation re prohibiting raising certain issues in the presence of the jury for Booker Bellwether case
03/01/2018	10258	Order re Motions in Limine re Recovery [®] Filter Complications, Recovery [®] Filter Development, FDA Warning Letter, IVC Filter as Lifesaving Devices, IVC filters are Gold Standard, Nonparties at Fault, Statements from Associations and Other Groups, FDA Consent for Warnings or Recalls for Booker Bellwether case
03/09/2018	10382	Order re Plaintiff's use of the depositions of Drs. Moritz, Rogers, and Stein at trial
03/19/2018	10489	Order re Simon Nitinol Filter complication evidence
04/18/2018	10819	Order re reconsideration motions relating to Recovery [®] Filter Evidence and cephalad Migration Deaths for Jones Bellwether case
04/27/2018	10920	Order re Plaintiff's motion for reconsideration of Court Order excluding evidence of Recovery [®] Filter Cephalad Migration Deaths for Jones Bellwether case
05/03/2018	10947	Order re Motions in Limine re (1) Case Specific Medical Issues (2) Relatives receipt of IVC Filters, (3) Experts Retained In Other Litigation, (4) Attorney Advertising, (5) Other Lawsuits for Jones Bellwether case
05/08/2018	11041	Order re cephalad migration deaths for Jones Bellwether case

Date Filed	Docket No	Docket Text
05/15/2018	11082	Order re reconsideration of Recovery migration deaths
05/29/2018	11256	Order re cephalad migration, Recovery filter and deaths and FDA evidence for Jones Bellwether case
09/04/2018	12507	Order re SIR Guidelines and IFU for Hyde Bellwether case
09/07/2018	12533	Order re cephalad migration deaths, SNF as reasonable alternative design, personal opinions of Dr. Muehrcke, informed consent, FDA evidence, Surgeon General's Call to Action, and falling accidents for Hyde Bellwether case
DEPOSITION DESIGNATION ORDERS		
03/07/2018	10348	Order re deposition designations for Booker Bellwether case
03/12/2018	10403	Order re deposition designations for Booker Bellwether case
03/14/2018	10438	Order re deposition designations for Booker Bellwether case
03/19/2018	10486	Order re deposition designations for Booker Bellwether case
03/21/2018	10497	Order re deposition designations for Booker Bellwether case
03/26/2018	10524	Order re deposition designations for Booker Bellwether case
05/01/2018	10922	Order re deposition designations for Jones Bellwether case
05/10/2018	11064	Order re deposition designations for Jones Bellwether case
05/11/2018	11073	Order re deposition designations for Jones Bellwether case
05/14/2018	11080	Order re deposition designations for Jones Bellwether case
05/31/2018	11313	Order re deposition designations for Jones Bellwether case
08/28/2018	12357	Order re deposition designations for Hyde Bellwether case
09/07/2018	12508	Order re deposition designations for Hyde Bellwether case
09/12/2018	12590	Order re deposition designations for Hyde Bellwether case
09/13/2018	12595	Order re deposition designations for Hyde Bellwether case
09/17/2018	12598	Order re deposition designations for Hyde Bellwether case
MISCELLANEOUS ORDERS		
11/10/2015	269	Amended Stipulated Protective Order re Confidentiality
11/22/2017	8872	Order re Bard's Motion for Summary Judgment on Preemption Grounds
11/22/2017	8874	Order re Bard's Motion for Summary Judgment for Booker Bellwether case
03/12/2018	10404	Order re Bard's Motion for Summary Judgment for Jones Bellwether case
03/30/2018	10587	Order re final trial preparation and setting Final Pretrial Conference for Jones Bellwether case
06/01/2018	11321	Order re final trial preparation and setting Final Pretrial Conference for Mulkey Bellwether case
07/13/2018	11872	Order re final trial preparation and setting Final Pretrial Conference for Hyde Bellwether case

07/26/2018	12007	Order re Bard's Motion for Summary Judgment for Hyde Bellwether case
08/17/2018	12202	Order re Bard's Motion for Summary Judgment for Kruse Bellwether case
09/12/2018	12589	Order re Preemption of Negligence Per Se Claim for Hyde Bellwether case
REMAND ORDERS		
09/07/2018	12534	Order and Suggestion of Remand
09/19/2018	12622	Conditional Remand Order Final